Robert E. Johnson and Geneva H. Johnson, a partnership, d/b/a Jolie Belts Company *and* International Ladies' Garment Workers' Union, Southern California District Counsel, AFL-CIO. Cases 21-CA-20101 and 21-CA-20215

December 16, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

On August 30, 1982, Administrative Law Judge Gordon H. Myatt issued the attached Decision in this proceeding. Thereafter, counsel for the General Counsel filed limited exceptions[1] and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge to the extent consistent herein, and to adopt his recommended Order, as modified herein.

The Administrative Law Judge found that on Friday, February 20, 1981, Respondent's co-owner, Geneva Johnson, threatened to reduce the hours that employee Amparo Rodriguez worked from 8 to 7 per day. Finding that Johnson made the threat due to Rodriguez' signing of a union authorization card and a dues-deduction card on February 20, the Administrative Law Judge concluded that Respondent's reduction-of-hours threat violated Section 8(a)(1) of the Act. However, the Administrative Law Judge dismissed the 8(a)(3) allegation that Respondent subsequently acted on that threat by actually reducing Rodriguez' hours, finding that "there is no conclusive evidence in the record to establish that this was in fact done." Counsel for the General Counsel excepts to this finding, and to the dismissal of that portion of the complaint. We find merit in that exception.

General Counsel's Exhibit 16 contains copies of 22 weekly payroll checkstubs that Amparo Rodriguez received for the period October 18, 1980, to November 13, 1981.[2] These slips indicate the following: Prior to Respondent's February 20, 1981, threat to reduce her hours, Rodriguez worked an average of 37.5 hours per week, with 3 weeks of 40 or more hours and only 1 week of less than 30 hours. After Respondent's February 20 threat to reduce her hours, Rodriguez worked an average of 32.0 hours per week, with 0 weeks of 40 or more hours, and 4 weeks of less than 30 hours. It thus is clear that Rodriguez, who normally worked 5 days per week, worked an average total of 5 hours per week less after the threat; that is, Rodriguez normal workday was reduced after the threat almost exactly 1 hour per day. We find, contrary to the Adminsitrative Law Judge, that Rodriquez' hours of work in fact were reduced after February 20. The finding of an unlawful threat to reduce by 1 hour per day the working hours of an employee, coupled with the showing that thereafter the employee in fact worked 1 hour per day less than prior to the threat, establishes a *prima facie* case of unlawful reduction of working hours. *Clark Manor Nursing Home Corp.*, 254 NLRB 455, 458 (1981). Respondent presented no explanation for Rodriguez' postthreat reduction in hours. The mere fact, as the Administrative Law Judge found, that Respondent's work volume was not great (with no indication there has been any change in the volume of work) and that there is no showing that Rodriguez worked fewer hours than other employees in no way rebuts the General Counsel's *prima facie* case. We conclude, therefore, that after threatening on February 20 to reduce Rodriguez' hours of work, Respondent in fact reduced her hours of work. As Respondent made the threat and took the subsequent action in retaliation for Rodriguez' union activities, it violated Section 8(a)(3) and (1) of the Act. *Clark Manor, supra; Winco Petroleum Company*, 241 NLRB 1118, 1127 (1979).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Robert E. Johnson and Geneva H. Johnson, a partnership, d/b/a Jolie Belts Company, Los Angeles, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraph 1(c) and reletter the subsequent paragraphs accordingly:

"(c) Reducing the hours of work of employees due to their joining or supporting the Union."

2. Insert the following as paragraph 2(b) and reletter the subsequent paragraphs accordingly:

[1] The only exceptions filed were by counsel for the General Counsel, and related solely to the issue of the alleged reduction in work hours of employee Amparo Rodriguez.

[2] Paycheck stubs for all weeks in that period of time were not introduced into evidence. G.C. Exh. 22, consisting of a summary of the Union's mid-1981 audit of Respondent's records, indicated similar prethreat average hours worked by Rodriquez; there were no detailed postthreat figures in that exhibit.

"(b) Make whole Amparo Rodriguez for any loss of pay or any other benefits she may have suffered by reason of Respondent's discriminatory reduction of her work hours, in the manner set forth in *Ogle Protective Service, Inc. and James Ogle, an Individual*, 183 NLRB 682 (1970), with interest thereon as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962)."

3. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT refuse to bargain collectively with International Ladies' Garment Workers' Union, Southern California District Council, AFL-CIO, as the exclusive bargaining representative of our employees by refusing to furnish the Union with wage and employment data of our employees or by unilaterally altering the terms of the collective-bargaining agreement or by refusing to comply with its hiring hall, wage and overtime, and union right-of-access provisions. The appropriate unit of our employees is:

All production, maintenance, shipping and receiving employees employed at our facility located in Los Angeles, California; excluding designers, head shipping clerks, office and clerical employees, owners and partners, salesmen, foremen and foreladies, watchmen, guards and supervisors as defined in the Act.

WE WILL NOT unlawfully restrain, interfere with, and coerce our employees in the exercise of their statutory rights by interrogating them about their support for the Union, instructing them to stay away from the union representative and directing them to give the Union false information regarding their employee status, threatening to reduce their work hours if they join or support the Union, directing them to discard union authorization cards, or instructing them to retrieve their union cards and resign their union membership.

WE WILL NOT discharge our employees because they indicate support for the Union.

WE WILL NOT reduce the hours of work of employees because they indicate support for the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by the National Labor Relations Act, as amended.

WE WILL provide the Union with the information it requested on March 4 and April 29, 1981, and any similar information it may request. We will notify the Union, and provide it with an opportunity to bargain, before making unilateral changes in the collective-bargaining agreement.

WE WILL pay our employees the difference between the wages they received from September 18, 1980, to the present time and the wage rates required by the collective-bargaining agreement, with interest thereon.

WE WILL make whole Amparo Rodriguez for any loss of pay or other benefits she may have suffered because of our discrimination against her.

WE WILL offer Hamilton Martinez immediate and full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent job without prejudice to his seniority or other rights and privileges, and WE WILL make him whole for any loss of earnings he may have suffered because of our discrimination against him.

WE WILL expunge from Hamilton Martinez's personnel records, or other files, any reference to his discharge on February 23, 1981, and notify him that evidence of this unlawful discharge will not be used as a basis for future personnel actions against him.

ROBERT E. JOHNSON AND GENEVA H. JOHNSON, A PARTNERSHIP, D/B/A JOLIE BELTS COMPANY

DECISION

STATEMENT OF THE CASE

GORDON J. MYATT, Administrative Law Judge: Upon charges filed in Cases 21-CA-20101 and 21-CA-20215 by International Ladies' Garment Workers' Union, Southern California District Council, AFL-CIO (hereinafter called the Union), against Robert E. Johnson and Geneva H. Johnson, a partnership, d/b/a Jolie Belts Company (hereinafter called Respondent), the Regional Director for Region 21 consolidated the cases and issued a consolidated complaint and a notice of hearing on June 9, 1981.[1] The substantive allegations of the consolidated complaint assert that Respondent violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended, 29 U.S.C. §151, *et seq.* (hereinafter called the Act). More specifically, the complaint alleges that Respondent violated Section 8(a)(1) of the Act by: (1) unlawfully interrogating employees concerning their union membership, activities, and sympathies; (2) instructing employees to stay away from union representatives and to deny their true employee status; (3) threatening employees with discharge or other reprisals for engaging in union or protected activities; (4) engaging in surveillance of employees while they were involved in union or protected activities; (5) instructing employees to destroy union authorization cards in their possession, and to revoke their signed union authorization cards; and (6) disparaging employees for communicating with a union representative. It is alleged that Respondent violated Section 8(a)(3) of the Act by discharging an employee for engaging in union or other protected activities, and by reducing the hours of work of an employee because she joined the Union. Finally, the complaint alleges that Respondent violated Section 8(a)(5) of the Act by refusing to furnish the Union, upon request, with information necessary and relevant to the discharge of its duties as the exclusive collective-bargaining representative of the employees, and by unilaterally altering the terms and conditions of employment contained in the collective-bargaining agreement in effect between the parties. Respondent filed an answer in which it admitted certain allegations of the consolidated complaint, denied others, and specifically denied the commission of any unfair labor practices.

A hearing was held in this matter in Los Angeles, California, on February 18 and 19, 1982. All parties were represented by counsel and afforded full opportunity to examine and cross-examine witnesses and to present material and relevant evidence on the issues and controversy. Briefs were submitted by the General Counsel and Respondent and they have been duly considered.

Upon the entire record in this case, including my observation of the witnesses and their demeanor while testifying, I make the following:

[1] Unless otherwise indicated, all dates herein refer to the year 1981.

FINDINGS OF FACT

I. JURISDICTION[2]

Respondent is engaged in the business of manufacturing belts and operates a facilitity in Los Angeles, California. During the calendar year 1981, a representative period, Respondent sold and shipped goods and products in excess of $50,000 to customers located within the State of California. Each of the customers supplied by Respondent in turn sold and shipped goods and products valued in excess of $50,000 directly to customers located outside the State of California. Accordingly, I find Respondent is an employer within the meaning of Section 2(2) of the Act engaged in commerce or in an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Ladies' Garment Workers' Union, Southern California District Council, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Contractual Relationship Between Respondent and the Union*

Robert and Geneva Johnson purchased the business enterprises herein sometime during late 1977. In July 1978, Gloria Feliciano, a business representative for the Los Angeles Joint Board (LAJB) of the International Ladies' Garment Workers' Union, obtained authorization cards from Respondent's entire employee complement. On August 21, 1978, Respondent and LAJB executed a collective-bargaining agreement. (G.C. Exh. 18(a).) The collective-bargaining agreement was effective from September 1, 1978, to and including August 31, 1981. Among other things, the agreement contained a union-security clause (art. 4); a hiring hall arrangement (art. 6); a workweek definition (art. 8); a provision relating to overtime (art. 9); a schedule of prospective wage increases (art. 10); and minimum wage rates for each job classification (art. 13).

At the time the collective-bargaining agreement was executed in 1978, LAJB was a subordinate organization of the Western States Region of the International Union. Phillip Leviton, currently administrative assistant to the director of the western region,[3] testified regarding the

[2] Respondent's answer denies the facts which would have satisfied the Board's discretionary jurisdictional standards. At the hearing, Respondent provided counsel for the General Counsel with certain subpoenaed information, which proved inconclusive, relating to the volume of interstate business performed by customers of Respondent. At the close of the testimony on the merits of the substantive issues, the hearing was adjourned to a date certain to allow the parties additional time within which to attempt to secure definitive commerce information. Subsequent thereto, the parties entered into a stipulation (attached hereto as Appendix A) [Appendix A has been omitted from publication] which demonstrates that Respondent meets the requirements for the assertion of jurisdiction by the Board.

[3] Leviton was the manager of LAJB when Respondent signed the collective-bargaining agreement with the Union. He subsequently became manager of the Southern California District Council, successor to LAJB, prior to occupying his current position.

administrative structure of the International and its relationship to the subordinate organizations. Under the constitution of the International, the governing authority of the Union is vested in its general executive board (GEB) which in turn administers the affairs of the Union through a general executive committee (GEC). All subordinate organizations of the International are established by the GEB. The United States and Canada are divided into 10 regions, each administered by a regional director appointed by the GEB. Within each region there are joint boards, joint councils, and district councils. Among their various other duties, the joint boards and district councils negotiate and administer collective-bargaining agreements for subordinate locals in their geographical jurisdiction. All locals, regardless of whether under a joint board or a district council, are chartered by the International Union. Under the provisions of the constitution of the International, the GEB has authority to "consolidate, merge, reorganize or dissolve any subordinate organization . . . for reasons of economy or efficiency, or because of changes in industries in the jurisdiction of the [International], or for other similar reasons, in the best interests of the [International] and its members."[4]

In early December 1978, the GEB passed a resolution restructuring subordinate organizations in southern California. (G.C. Exh. 17(b).) As a part of this realignment, LAJB was merged into the Southern California District Council (District Council). LAJB and District Council in turn passed resolutions relinquishing and accepting, respectively, the duties and functions authorized by the GEB.[5]

There is no indication in the record that Respondent was ever formally notified of the merger of LAJB into the District Council. However, on August 8, 1979, Respondent and the District Council entered into a midterm modification of a provision of the existing collective-bargaining agreement relating to "Benefit Funds." This midterm agreement specifically stated that, except for the modification, "the collective-bargaining agreement shall remain unchanged and in full force and effect in accordance with the existing terms and provisions thereof." (G.C. Exh. 18(b).)

B. *The Events Causing the Dispute*

In October 1980, Respondent laid off its employees because of insufficient work. The employees complained to Feliciano because they had not received their vacation pay at the time of the layoff. Feliciano went to the shop and spoke with Geneva Johnson about the matter. Johnson promised to pay the money to the employees within a month but was unable to do so because of the poor financial condition of the business. Feliciano returned in November and Johnson assured her that the employees would receive their money by Christmas.[6] When the laid-off employees failed to receive any money in December, they continued to press Feliciano about the matter. Feliciano returned again in January 1981 to demand checks from Respondent for the employees. Johnson informed Feliciano that she did not have the money and Feliciano threatened to file under the grievance provisions contained in the collective-bargaining agreement. Johnson told her to go ahead and do so.

While she was discussing the matter of the vacation pay with Johnson, Feliciano noticed that Claudina Rivas, one of the laid-off employees, and several new people were performing work in the shop. She mentioned this to Johnson and stated that, under the terms of the contract, she would have to get the new employees to sign authorization cards for the Union. Johnson informed Feliciano that the new people were only working part time to clean up the facility because of a directive from the fire department.[7]

Feliciano filed a grievance against Respondent and a hearing was held on February 18 before an impartial arbitrator, as required by the collective-bargaining agreement. The grievance was not limited to the vacation pay issue but also included a claim that Respondent failed to deduct union dues for the new employees. (See G.C. Exh. 3(a).) At the hearing, Johnson argued that she did not have signed authorizations from the employees to allow her to make the dues deductions. The arbitrator ruled that Respondent had to permit the union representative to have access to the employees, provided she did not contact them during working time; i.e., that she would talk to the employees "before or after work, lunch time, or during break periods." (G.C. Exh. 3(c).) The arbitrator also directed Respondent to pay the vacation pay owed to the laid-off employees.

On February 17 or 18, the exact date is not clear in the record, Johnson spoke to the employees in the shop. She used Rivas as her interpreter. Rodriguez testified that Johnson told the employees Feliciano was going to bring union cards to the shop and she (Johnson) would not get angry if the employees signed the cards.[8] Johnson stated it was up to the employees; however, she would prefer that they not sign the cards. She then asked

[4] G.C. Exh. 17(a), sec. 8.

[5] G.C. Exhs. 17(c) and 17(d). Under the merger arrangements, all contracts previously administered by LAJB were now administered by the District Council. All locals operating under LAJB became locals of the District Council and all delegates from the locals to LAJB automatically became delegates to the District Council. In addition, all business representatives of the LAJB became business representatives of the District Council.

[6] Johnson indicated she expected to recover money from a customer against whom she had filed a lawsuit.

[7] In addition to Rivas, the employees observerd by Feliciano were Amparo Rodriguez, Hamilton Martinez, Jose Perez, Maria Verduzco, Francisco Avalos, and Bertha Olivas. At the hearing, Johnson testified that all of the employees, with the exception of Avalos who was going to school, were full-time employees.

[8] Rodriguez testified at the hearing through an interpreter. During the course of her testimony, it became apparent that Rodriguez could understand, read, and speak English to some extent. For example, she responded in English to a complicated question by Respondent's counsel before the interpreter translated it into Spanish. She also pointed to certain portions of her affidavit, written in English, and indicated its meaning. When this was noted at the hearing, counsel for the General Counsel and the Charging Party pointed out that, while she had some limited knowledge of the English language, she was not fluent in it and thus required the use of an interpreter in order to give a full account of the events to which she was testifying. Upon reflection, I accept this explanation as being a correct representation of her ability to understand and communicate in English. Therefore, I do not find that these lapses into English affected the trustworthiness of her testimony in any manner.

if any of the employees wanted to sign cards for the Union and Rodriguez indicated that she did. Johnson told Olivas that, if Feliciano gave her a card, she should not sign it. She instructed Olivas to tell Feliciano that she was a student—thus indicating that the employee was a part-time worker.[9]

On February 20, Feliciano came to the shop shortly before the lunch break. According to Johnson, Feliciano talked to her about "trivia" until the bell, signaling the lunch hour, rang. Then Feliciano spoke to the employees in a group and Johnson went into her office.[10] Feliciano spoke to the employees in Spanish and, according to her testimony, told the employees that, under the terms of the contract, they would have to join the Union. She stated she gave the employees copies of union authorization cards and cards authorizing the deduction of union dues.[11] While Feliciano was talking, all of the employees except Martinez and Rodriguez walked away. Verduzco told Feliciano she was not working full time and did not want to bother Johnson with the Union.

Rodriguez filled out and signed both of the cards and returned them to Feliciano. Martinez stated he was undecided and wanted to know more about the Union. Feliciano suggested he come to the union office and she would explain about the Union to him in greater detail. Martinez then put both cards in his shirt pocket. At this point, Johnson came up to the group and said, "My children [referring to the employees] have to eat and you are taking their time away from them." Johnson then placed her hands on Feliciano and, according to Feliciano, pushed her a little bit saying, "Go out." The bell rang indicating the end of the lunch hour and Feliciano left the premises.[12]

Martinez testified that, after Feliciano left the shop, Johnson came over and noticed the union cards sticking out of his shirt pocket. She took them and told Martinez that the Union was no good for him because he was a medical student.[13] Johnson took the cards to her office and showed them to a friend of hers, Paz Zimmerman, who was there. She then returned to the shop and indicated by gesturing that Martinez should throw the cards away. Martinez testified that Johnson came back later and asked if he had signed the union cards. Martinez told Johnson he had not and pointed to a trash receptacle to indicate that he had thrown the cards away. According to Martinez, Johnson said, "Fine," and "Amparo, no more." By this, Martinez understood Johnson to indicate that Rodriguez would not work for Respondent anymore. Martinez further testified that he overheard Johnson tell Rodriguez that she was being given the afternoon off so she could go to the Union and look for a job. Johnson stated that Rodriguez should go to Feliciano to see if the Union would do what it said it would for the employees. According to Martinez, Johnson told Rodriguez there was no longer any work for her at Respondent's shop and Rodriguez began to cry.

Rodriguez testified that, after Feliciano left the premises on February 20, Johnson came over and called her into the office. Paz Zimmerman was fluent in Spanish and interpreted for Johnson. According to Rodriguez, Johnson asked if she signed the union cards and Rodriguez replied that she had. Johnson wanted to know what she had written down and Rodriguez stated her name and address. Johnson then asked if any of the other employees had signed and was told they had not. Rodriguez testified that Johnson then questioned her about why she signed the cards for the Union. Rodriguez reminded Johnson that she previously had stated that she wanted to join the Union. After repeatedly asking Rodriguez why she had signed the union cards, Johnson then said she would have the employee removed from her hospitalization insurance. She indicated that only she (Johnson) and her attorney knew about the hospitalization benefits. She also told Rodriguez that since she had joined the Union she would only work 7 hours rather than 8 hours a day. According to Rodriguez, Johnson said that the Los Angeles union was no good but that the Union in New York was all right. Johnson asked Rodriguez if she were on the side of the Company or the Union. Rodriguez protested that she had already signed the union cards and had given them to Feliciano. Johnson then told the employee that she should go to Feliciano and get her cards back so that she could tear them up. Johnson also told Rodriguez that Feliciano was "a great liar" and she should go to Feliciano to see if the Union would get her a job. At the conclusion of the discussion in the office, Rodriguez agreed to go to the Union's office to retrieve her cards. Johnson gave Rodriguez instructions on how to get to the Union's office. Rodriguez returned to her work station for a short period of time and then got up in order to go to the Union's headquarters. At this point, Johnson came out in the shop and told Rodriguez not to go because she was needed in the shop.

Martinez went to the Union's headquarters after work that same evening. He told Feliciano about the incidents at the shop after she left. He informed Feliciano that he was afraid of losing his job. After receiving assurances from Feliciano that he would not be fired, Martinez

[9] Martinez testified that, when Johnson spoke to the employees, she said there was a union and that she would prefer that the employees not be a part of it. Although Johnson testified extensively at the hearing, she did not refute these statements attributed to her by Martinez and Rodriguez.

[10] A rough sketch introduced into evidence as Resp. Exh. 1 discloses that the work area was a large open space in which machines and tables were located. Johnson's office was an enclosure at one end of the shop. According to Johnson, a person in the office would not be able to observe what was going on in the shop, because of the clutter of things stacked along the walls, unless one deliberately stood in the doorway.

[11] Martinez testified that Feliciano explained the benefits the employees would receive by being represented by the Union and that Respondent could not fire them if they signed union cards. Rodriguez testified that Feliciano stated that Respondent would not be obligated to give the employees benefits if they did not join the Union.

[12] Johnson admitted coming up to the Feliciano because she saw Feliciano and Rodriguez in a huddle. Johnson testified she told Feliciano that the employees needed "rest and sustenance" because they had to work and she directed Feliciano to leave the premises. At this point, according to Johnson, Feliciano accused her of firing a former employee (Maria Reyes) and of not giving Rivas a raise. Johnson stated she became angry and gave Feliciano a "gentle nudge." According to Johnson, she did not push Feliciano out of the shop because "it would take a crane to move Gloria. She is heavy." Johnson further testified that she observed Rodriguez sign the union cards but indicated that it did not matter to her.

[13] Martinez was from El Salvador and testified that he had attended medical school there until the university was closed.

signed an authorization and dues deduction card for the Union.

The following Monday (February 23) Feliciano returned to the plant during the lunch hour. She stated that her purpose was to sign up the other employees who had walked away the previous Friday. As she talked to the employees, Feliciano observered Johnson wave her hands and some of the employees listening to Feliciano then walked away. Johnson came over and told Feliciano she was not allowed to solicit the employees on the premises. Feliciano protested that the contract provided her with the right to do so. Johnson then went into the office and called her attorney on the phone, and Feliciano spoke to him. Respondent's attorney informed Feliciano that she was not permitted to solicit on the premises and threatened to have Respondent call the police. According to Feliciano, Respondent's attorney said she could not solicit in the shop after "doing a bum rap to the company." Feliciano remained until the lunch period ended and then left.

At the end of the day, Johnson spoke to Martinez. According to Martinez, Johnson stated that he would have the next morning off and she gave him the address of a hospital where he could apply for a job. Johnson told the employee that he could return in the afternoon to get his paycheck. Martinez protested that he wanted to work for Respondent, but Johnson told him she did not want him there for the next 6 months because Feliciano would be at the plant.

Johnson testified that she let Martinez go on February 23 because he was a medical student and the work was beneath his educational level. She stated that Rivas brought Martinez to the plant and recommended him as an employee. Although he was hired on a trial basis, Johnson stated she observed that he was bored and he was not dexterous in handling the work. According to Johnson, Martinez would stand around and watch other employees. She testified that he also used tools which he was warned not to use and that many of these tools disappeared. As an example of his inability to perform the work, Johnson stated that on one occasion Martinez spilled 5 gallons of adhesive in the shop and caused quite a cleanup problem. Johnson testified that Rivas came to her and commented that Martinez was not working out,[14] and it was at this point that she decided Martinez should work elsewhere. Johnson further testified that she contacted a friend at a hospital and got her to agree to interview Martinez for a job there. She gave Martinez the address of the hospital and told him to go there to apply for a job because she was relieving him of his duties at the shop. Johnson testified that Martinez then pulled the union cards out of his pocket and protested that he had not signed them. Johnson replied that she did not care about the union cards and laughed. She stated that, when Martinez returned for his final paycheck, he indicated he did not go to the hospital but, rather, went to the Union to get a job. According to Johnson, she felt that Martinez should work in the medical profession.

[14] Although still employed by Respondent at the time of the hearing, Rivas was not called as a witness.

Rodriguez testified that, when she was hired in October 1980, she only received the minimum wage of $3.10 per hour. She stated she normally worked 8 hours a day and only on several occasions did she receive overtime for working extra hours. Rodriguez also stated that, when she worked on Saturdays, she was paid at the regular hourly rate.[15] The records show that until the payroll period ending March 6, 1981, when Rodriguez worked in excess of 35 hours a week she was paid at her regular hourly rate.

On March 4, the Union sent a letter to Respondent requesting, among other things, a list of all employees hired since the execution of the collective-bargaining agreement who were currently employed or on temporary layoff status. The Union also asked for the addresses of the employees and their classification and dates of hire. At the same time, the Union filed a grievance under the contract with the impartial arbitrator asserting, among other things, Respondent's interference with the business agent's access to the shop, failure to provide the Union with a list of employees hired since the date of the agreement, interference with the solicitation of employees to join the Union, and failure to comply with the Union's hiring hall provisions. After a series of meetings over an extended period of time between Respondent's attorney and the Union's attorney, Respondent, on May 26, proposed to allow the union representative access to the employees in the shop in a designated area. Respondent indicated that it would also be willing to post a notice in the shop to this effect. At the time of the hearing herein, Respondent asserted the Union had not responded to this offer.

On April 29, Feliciano went to Respondent's shop and told Johnson she was there to determine whether the employees had received the wage increase required by the contract and whether they were receiving the contract rates for overtime worked. Johnson told Feliciano that she did not have to inform her about anything. According to Johnson, she stated that she did not want the Union anymore even if she had to close the shop. While this discussion was taking place, Feliciano noticed different employees working in the shop and she informed Johnson that they had to be signed up by the Union. Johnson asserted, according to Feliciano, that the new employees were not regular workers. Feliciano then requested permission to talk to the employees to advise them to come down to the union hall so a determination could be made as to whether they were being paid the proper wages and were receiving the proper overtime pay. Johnson would not allow Feliciano to speak to the employees but said she would advise them that they could go down to the union hall. During this conversation, Johnson also expressed anger at Feliciano because she had filed under the grievance procedure for the vacation pay of other employees and because she had also

[15] Under the terms of the collective-bargaining agreement (art. 8), the workweek consists of 35 hours in the first 5 days of the week (Monday through Friday) and the regular workday is 7 hours. All work in excess of 7 hours per day or 35 hours per workweek and Saturday work are to be compensated at 1-1/2 times the regular hourly rate (art. 9).

advised a former employee to collect unemployment compensation when she was laid off by Respondent.

Johnson admitted that she prevented Feliciano from soliciting employees to join the Union when she visited the shop. She also admitted that she prevented Feliciano from speaking to the employees to ascertain their names, what work they were performing in the shop, and where they lived. Johnson stated she had no objections to Feliciano talking to the employees about shop problems, but anything else was considered soliciting. Johnson further admitted that she did not attempt to hire her employees through the Union's hiring hall as required by the contract. She stated that in 1981 she became "anti-Gloria" and after that time ceased to contact the Union for new hires.

IV. CONCLUDING FINDINGS

A. *The 8(a)(5) Violations*

Respondent's first argument is stated in the rhetorical question set forth in its brief; i.e., "Who is the Union?" Respondent asserts that Southern California District Council is not the bargaining entity with whom it entered into a contractual relationship. Implicit in this argument is an attack on the validity of the merger of LAJB into Southern California District Council. If the District Council has not succeeded to the representational rights of LAJB (which no longer exists), then Respondent cannot be held to have violated the Act by failing to abide by the terms of the agreement with the nonexistent labor organization. Although appealing on its face, this argument is without merit.

First, there is no question but that the merger of LAJB into District Council complied with the constitution of the Union. The GEB passed a resolution directing the merger in December 1978 and both LAJB and District Council passed companion resolutions effectuating that directive. All of the assets and liabilities, including contractual obligations, of LAJB became assets and liabilities of District Council; all of the constituent locals of LAJB became constituent locals of District Council; all of the delegates to LAJB from the locals became delegates to the District Council; and all of the business representatives of the LAJB servicing the collective-bargaining agreements became business representatives of the District Council. The only element missing in this merger situation, but mandated by the Board, is evidence that all eligible employees were properly notified and provided an opportunity to vote on the merger.[16] *Lord Jim's*, 259 NLRB 1162 (1982); see also *Amoco Production Company*, 239 NLRB 1195 (1979), remanded 613 F.2d 107 (5th Cir. 1980); *Goodfriend Western Corp., d/b/a Wrangler Ranch*, 232 NLRB 527 (1977).

However, Respondent here cannot now attack the validity of the merger because the evidence fully demonstrates that, subsequent to the merger, Respondent entered into a collective-bargaining relationship with District Council as the continuation of LAJB. Thus, on August 8, 1979, Respondent and District Council entered into a modification of a portion of the benefit provisions of the LAJB agreement and, more importantly, specifically agreed that the LAJB contract, including the modification, would remain in full force and effect between the parties. Therefore, Respondent recognized, at least at this point, the District Council as the continuation of LAJB and negotiated with it as such. Accordingly, I find, in these circumstances, that District Council is a continuation of LAJB and is the successor to LAJB's representational rights with Respondent. Cf. *Warehouse Groceries Management, Inc.*, 254 NLRB 252 (1981).

Turning to the merits of the violations alleged in the complaint, it is well settled that a collective-bargaining representative is entitled to receive information from an employer which is necessary and relevant to the administration of a collective-bargaining agreement. *Detroit Edison Co.* v. *N.L.R.B.*, 440 U.S. 301, 303 (1979); *N.L.R.B* v. *Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967); *N.L.R.B.* v. *Truitt Manufacturing Co.*, 351 U.S. 149, 152 (1956). See also *N.L.R.B.* v. *Associated General Contractors of California, Inc.*, 633 F.2d 766, 770 (9th Cir. 1980). It is equally settled that information relating to wages, fringe benefits, and employment data concerning bargaining unit employees is presumptively relevant and necessary for purposes of negotiations and administration of collective-bargaining agreements. *Salem Village I, Inc., et al.*, 256 NLRB 1015 (1981); *Alenco, a Division of Redman Building Products, Inc.*, 251 NLRB 386 (1980); *Western Electric, Inc.*, 225 NLRB 1374 (1976); *Hotel Enterprises, Inc., d/b/a Royal Inn of South Bend*, 224 NLRB 810 (1976); *Warehouse Foods, a Division of M. E. Carter and Company, Inc.*, 223 NLRB 506 (1976); *Building Construction Employers Association of Lincoln, Nebraska, et al.*, 185 NLRB 34 (1970); *Cowles Communications, Inc.*, 172 NLRB 1909 (1968); *Curtiss Wright Corporation, Wright Aeronautical Division*, 145 NLRB 152 (1963), enfd. 347 F.2d 61 (3d Cir. 1965). Nor is it necessary for a union to demonstrate the precise relevancy of the requested information, unless an employer offers evidence to rebut the presumption. *Salem Village I, Inc., et al., supra; N.L.R.B.* v. *Associated General Contractors of California, Inc., supra.*

In the instant case, the Union requested information on March 4 relating to employment data, including names and addresses and job classifications for past and present unit employees. Respondent failed to supply this information even though the parties met on several occasions regarding this and other matters. At no time did Respondent contest the relevancy of the information but, rather, it took the position that the Union could get the information from other sources, including the Union's records or from direct contact with the employees.

It is also unrefuted in the record that Feliciano visited Respondent's premises on April 29. She made a request for information to enable the Union to determine if the employees had received wage increases required under the contract and if they were receiving the proper overtime wage rate. Johnson refused to give this information to Feliciano stating that she did not have to tell the union representative anything.

[16] The assertion by the General Counsel that there was "no employee-member opposition" to the merger does not address this issue.

From the above, it is evident that Respondent's refusal to supply information to the Union relating to wage and employment data of bargaining unit employees was not based on any reason recognized as legitimate under the case law. I find, therefore, that by failing to supply the requested information to the Union, Respondent has violated Section 8(a)(5) of the Act.

I also find that Respondent has committed additional violations of Section 8(a)(5) of the Act by unilaterally changing the terms of the existing collective-bargaining agreement. The agreement required Respondent to call the union hall for new employees and to allow the Union 48 hours within which to supply applicants before hiring from other sources. By her own admission, Johnson did not attempt to secure employees through the Union in 1981 because she had become "anti-Gloria."

Similarly, Respondent failed to adhere to the wage rates and overtime provisions in the collective-bargaining agreement. Rodriguez testified that she was hired at the Federal hourly minimum wage rate in 1980 and she was paid her basic hourly rate for overtime and Saturday work. Although Respondent contends that the testimony of Rodriguez is not credible, it failed to come forward with any records which would establish her precise hourly rate of pay. Since these records were within the sole possession of Respondent, I find that this failure to produce the precise records warrants an inference that had they been offered the information revealed would have been adverse to Respondent's interests. Furthermore, the records that were subpoenaed and introduced into evidence by the General Counsel established that, at least until the pay period ending March 2, Rodriguez was paid her basis wage rate for a 40-hour workweek in contravention of the terms of the collective-bargaining agreement. Since the agreement called for a 7-hour workday on a 5-day week (Monday through Friday) basis and overtime pay for hours over 7 each day and for Saturday, it is evident that Respondent was unilaterally altering the wage provisions of the collective-bargaining agreement, at least with respect to Rodriguez.

Finally, the collective-bargaining agreement (art. 36) gave the union representative the right of access to the premises to ascertain whether the provisions of the agreement were being observed by Respondent. I am not unmindful of the fact that Feliciano's visits during the lunch hours on February 20 and 23 were for the purpose of "signing of the people." I do not perceive the right of access provision as giving the union representative the right to solicit members for the Union. However, on April 29, Feliciano visited the premises to ascertain if the employees were receiving the wage increases mandated by the contract and to determine whether they were receiving the proper wage rate for overtime work. When she observed that Respondent had hired new employees, Feliciano sought to speak with them to advise them to come to the Union's office so that she could determine whether they were receiving the proper rates of pay. Johnson denied her the opportunity to do so. Since she was refused access to the employees to advise them to assist her in determining whether the contract provisions were being followed, I find that Respondent was unilaterally abrogating that provision of the collective-bargaining agreement.

In sum, I find that Respondent violated Section 8(a)(5) by unilaterally changing the terms of the existing collective-bargaining agreement in the following manner: (1) refusing to comply with the hiring hall provisions of the agreement; (2) refusing to pay employees the hourly wage rates and overtime wages required by the collective-bargaining agreement; and (3) interfering with the contractual right of the Union to have access to the employees to determine if the contract provisions were being observed by Respondent.[17]

B. *The 8(a)(1) Violations*

The complaint alleges that, when Johnson spoke to the employees on February 17 to inform them that Feliciano was coming to the shop, she unlawfully interrogated the employees and interfered with their right to join and support the Union. As noted, Johnson testified at length during the hearing. However, at no time during the course of her testimony did Johnson refute the statements of Rodriguez and Martinez regarding the meeting on February 17. Indeed, other than to assert that the testimony of Rodriguez and Martinez was not worthy of belief, Respondent did not adduce any testimony to establish a different version of this event.[18]

Contrary to the assertions of Respondent, I find that Rodriguez and Martinez were forthright and credible witnesses. Although it is apparent that Rodriguez had some knowledge of English, both verbal and written, I find that her need to testify through an interpreter was not for the purpose of deception but, rather, to enable her to give a full and accurate account of the events she heard and observed. I also find that the testimony given by Martinez was candid and convincing.

Thus, on the basis of the unrefuted testimony, I find that, on February 17, Johnson told the employees that she would not get angry if they signed union cards, but that the decision was up to them. She then told the employees that she would prefer that they not sign and polled them to see which employees intended to sign union cards. Johnson also instructed Olivas to conceal her true employee status from the union representative. The assertion that she would not be angry if the employees joined the Union was nothing more than a hollow pretense since she made it clear to the employees that, if they did sign union cards, it would be against her wishes. In these circumstances, I find the statements of Johnson constituted unlawful interrogation as her comments conveyed to the employees her displeasure should they become involved with the Union and were intended to discourage such activity. *PPG Industries, Inc., Lexington Plant, Fiber Glass Division*, 251 NLRB 1146 (1980). In addition, when Johnson polled the employees, she gave no assurances that reprisals would not be taken against them

[17] The fact that Respondent offered in May to provide the Union with access to the employees and post a notice to that effect does not cure its prior failure to comply with this provision of the contract.

[18] It is noted at this point that Johnson used Rivas as an interpreter when she spoke to the employees on this occasion. However, as previously noted, Rivas was not called as a witness in these proceedings.

if they acted contrary to her wishes. Indeed, by expressing her desire that the employees not become involved with the Union, Johnson, by implication, conveyed the impression to the employees that some form of reprisal—if no more than her ill-will—could be anticipated by employees who acknowledged support for the Union. Cf. *Graham Architectural Products Corporation*, 259 NLRB 1174 (1982).

Accordingly, by unlawfully interrogating employees on February 17 about their support for the Union and by attempting to discourage employees from joining the Union, Respondent interfered with the free exercise of their rights guaranteed by Section 7 and thereby violated Section 8(a)(1) of the Act.

The unrefuted testimony also discloses that, on February 20, Johnson observed Rodriguez sign union cards for Feliciano and, when the union representative left the premises, threatened the employee with a series of reprisals. Johnson called Rodriguez into her office and asked, through Zimmerman,[19] why the employee signed the cards. She also inquired as to what information Rodriguez had placed on the cards. When Rodriguez indicated that she had informed Johnson on February 17 that she wanted to join the Union, Johnson threatened to remove the employee from Respondent's hospitalization insurance plan. She also threatened to reduce the hours that Rodriguez worked from 8 to 7 each day. She told the employee to go to the Union and see if it could get her a job and then directed Rodriguez to go to the union headquarters and retrieve her cards and destroy them. It is more than evident that Johnson threatened to reduce Rodriguez' hours and to remove her from the company medical insurance plan because the employee joined the Union contrary to Johnson's expressed wishes. That such conduct interferes with Section 7 rights guaranteed employees requires no explication or citation. Therefore, I find that, by the above conduct on the part of Johnson, Respondent further violated Section 8(a)(1) of the Act.

On this same date, Johnson noticed union cards sticking out of the shirt pocket of Martinez. By gesture, she indicated to the employee that he should throw the cards away. She later returned and asked the employee if he had signed the union cards. When Martinez informed Johnson that he had discarded the cards in the waste material basket, she voiced her approval and indicated that Rodriguez would no longer work for Respondent. Without question, this conduct also violates Section 8(a)(1) of the Act.

C. *The 8(a)(3) Violations*

The complaint alleges that, commencing on February 23, Respondent reduced the workday of Rodriguez from 8 to 7 hours. Other than the threat by Johnson to take this action, there is no conclusive evidence in the record to establish that this was in fact done. While the wage reports introduced into evidence by the General Counsel reveal that Rodriguez did work fewer hours commencing the pay period ending February 27, there is nothing in the record which demonstrates that she worked fewer hours than warranted by the volume of business or that she worked fewer hours than other employees. Indeed, it is clear that Respondent's business operation was marginal and the volume of work was not great. In the absence of some evidence to establish that Rodriguez would have normally worked longer hours each day after February 23, I conclude that the record evidence does not preponderate in favor of a finding that her hours were in fact reduced by Respondent because she engaged in union activities. Accordingly, I find that this allegation of the complaint has not been established by a preponderance of the evidence and recommend that it be dismissed.

The final 8(a)(3) violation relates to the discharge of Martinez on February 23. Martinez credibly testified that he went to the union office the evening of February 20 and signed a new set of authorization and dues deduction cards for the Union. At the end of the workday on the following Monday, he was told by Johnson that he need not report to work anymore and he should go to a hospital to interview for a job. When Martinez protested that he wanted to continue to work for Respondent, Johnson told him that she did not want him at the shop for the next 6 months because Feliciano would be coming to the premises.

I do not credit Johnson's testimony that Martinez was discharged because he proved to be an unsatisfactory employee who was not suitable for the work performed in the shop. Although it is laudable that Respondent professed to want to assist Martinez in securing work in the area where he could use his medical school training, I find this explanation to lack persuasiveness. Johnson testified that she hired Martinez on the recommendation of Rivas and that Rivas subsequently came to her and stated that Martinez was not suitable for the job. As noted, Rivas was not called by Respondent as a witness although she was in Respondent's employ at the time of the hearing. Furthermore, the timing of the discharge of Martinez warrants the inference that it was motivated by the fact that the employees indicated an interest in supporting the Union. Martinez was discharged 3 days after Johnson observed him talking with Feliciano in the shop and instructed him to discard the union cards. The discharge also followed on the heels of the threats by Johnson to retaliate against Rodriguez for having signed cards for the Union. In these circumstances, I find that Respondent discharged Martinez because he manifested an interest in supporting the Union contrary to Respondent's wishes. *Limestone Apparel Corporation*, 255 NLRB 722 (1981). In so doing, Respondent has violated Section 8(a)(3) of the Act.

CONCLUSIONS OF LAW

1. The Respondent, Robert H. Johnson and Geneva H. Johnson, a partnership, d/b/a Jolie Belts Company, is an employer within the meaning of Section 2(2) of the Act, engaged in commerce within the meaning of Section 2(6) and (7).

2. International Ladies' Garment Workers' Union, Southern California District Council, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

[19] As in the case with Rivas, Zimmerman was not called as a witness in these proceedings.

3. The Union is, and has been at all times material herein, the exclusive collective-bargaining representative of Respondent's employees in an appropriate unit set forth below:

> All production, maintenance, shipping and receiving employees employed by the Respondent at its Los Angeles, California facility; excluding designers, head shipping clerks, office and clerical employees, owners and partners, salesmen, foremen and foreladies, watchmen, guards and supervisors as defined in the Act.

4. By refusing to furnish the Union with information requested by letter on March 4, 1981, and by verbal request on April 29, 1981, Respondent has violated Section 8(a)(5) and (1) of the Act.

5. By refusing to comply with the hiring hall, wage and overtime, and the union right-of-access provisions of the collective-bargaining agreement, Respondent has unilaterally altered the terms of the agreement in effect between it and the Union in violation of Section 8(a)(5) and (1) of the Act.

6. By unlawfully interrogating employees about their support for the Union, instructing employees to stay away from the union representative or to give false information about their employee status to the Union, threatening to reduce employees' hours of work because they join or support the Union, instructing employees to destroy union authorization cards, and instructing employees who join the Union to retrieve their union cards and resign their union membership, Respondent has interfered with and coerced employees in the exercise of rights guranteed them by statute in violation of Section 8(a)(1) of the Act.

7. By discharging employee Hamilton Martinez on February 23, 1981, because he manifested an interest in joining and supporting the Union, Respondent has violated Section 8(a)(3) and (1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1), (3), and (5) of the Act, it shall be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Having found that Respondent unlawfully discharged Hamilton Martinez on February 23, 1981, it shall be recommended that he be offered immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position without prejudice to his seniority or other rights and privileges. Respondent shall be ordered to make this employee whole for any loss of earnings he may have suffered due to the discrimination against him. In addition, having found that Respondent failed to adhere to the wage and overtime provisions of the collective-bargaining agreement in effect between it and the Union, it shall be ordered to pay the employees the difference between the amount of wages they received and the wages required under the terms of the collective-bargaining agreement. All backpay shall be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[20]

Upon the foregoing findings of fact, conclusions of law, the entire record in this case, and pursuant to section 10(c) of the Act, I hereby issue the following recommended:

ORDER[21]

The Respondent, Robert E. Johnson and Geneva H. Johnson, a partnership, d/b/a Jolie Belts Company, Los Angeles, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with the Union by refusing to furnish it with the wage and employment data of the unit employees.

(b) Unilaterally altering the terms of the collective-bargaining agreement by refusing to comply with the hiring hall, wage and overtime, and union right-of-access provisions of the agreement.

(c) Unlawfully discharging employees for the reason that they join or indicate support for the Union.

(d) Unlawfully interfering with and coercing employees in the exercise of their statutory rights by interrogating employees about their support and sentiment for the Union, instructing employees to stay away from the representatives of the Union and directing them to give the Union false information regarding their employee status, threatening to reduce the work hours of employees because they join the Union, directing employees to discard their union authorization cards, and instructing employees who join the Union to retrieve their authorization cards and resign their membership in the Union.

(e) In any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Offer Hamilton Martinez immediate and full reinstatement to his former job or, if that position no longer exists, to a substantially equivalent position without prejudice to his seniority or the rights and privileges previously enjoyed. In addition, make Martinez whole in the manner set forth in the section of this Decision entitled "The Remedy" for any loss of earnings he may have suffered by reason of the discrimination against him. Further, pay to the unit employees the difference between the amount of wages they received, for work performed from September 18, 1980, to date, and the wages required by the terms of the collective-bargaining agreement.

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[20] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[21] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Expunge from its files any reference to the discharge of Hamilton Martinez on February 23, 1981, and notify him in writing that this has been done and that evidence of this unlawful discharge will not be used as a basis for future personnel actions against him.

(d) Post at its facilities located in Los Angeles, California, copies of the attached notice marked "Appendix B."[22] Copies of said notice, on forms provided by the Regional Director for Region 21, after being duly signed by its representative shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Said notices shall be written in both English and Spanish. Reasonable steps shall be taken to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the allegations contained in the complaint not specifically found to be violations are hereby dismissed.

[22] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."